OCT 28 1972

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1630

IN THE MATTER OF TENNESSEE CENTRAL RAILWAY COMPANY,
Debtor,

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
ILLINOIS CENTRAL RAILROAD COMPANY,
SOUTHERN RAILWAY COMPANY, et al.,
Petitioners,

v.

A. BATTLE RODES, Trustee of Tennessee Central Railway Company, et al.,
Respondents.

PETITION FOR REHEARING

K. HARLAN DODSON
HOOKER, KEEBLE, DODSON & HARRIS
900 Nashville Trust Building
Nashville, Tennessee 37201

WILLIAM F. BUNN,
135 East Eleventh Place
Chicago, Illinois 60605

DUNCAN E. PHILLIPS
P. O. Box 1808
Washington D. C. 20013

CHARLES A. HORSKY,
888 16th Street, N. W.
Washington, D. C. 20006

Attorneys for Louisville and Nashville Railroad Company, Illinois Central Railroad Company, Southern Railway Company, and Eleven Other Petitioners

(* Counsel

PHILLIP M. LANIER
P. O. Box 1188
Louisville, Kentucky 40201

DAVID M. KEEBLE
900 Nashville Trust Building
Nashville, Tennessee 37201

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St. 63101 314-231-4477

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1680

IN THE MATTER OF TENNESSEE CENTRAL RAILWAY COMPANY,
Debtor,
LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
ILLINOIS CENTRAL RAILROAD COMPANY,
SOUTHERN RAILWAY COMPANY, et al.,
Petitioners,
v.
A. BATTLE RODES, Trustee of Tennessee Central Railway Company, et al.,
Respondents.

PETITION FOR REHEARING

The petitioners, Louisville and Nashville Railroad Company, Illinois Central Railroad Company, Southern Railway Company, *et al.*, respectfully request the Court to grant a rehearing of its denial of the petition for writ of certiorari in this case on October 10, 1972, and withhold a final decision on the petition until, as described below, other litigation having a substantial relationship to the issues in this case has been concluded. This request is based on intervening circumstances of substantial or controlling effect within Rule 58(2) of the Rules of this Court.

Petitioners are claimants in the Section 77 reorganization proceeding involving the Tennessee Central Railway Company for amounts totaling approximately $900,000, the bulk of which are for interline freight claim balances. The United States, asserting a priority under Section 3466, has filed a claim which, if allowed, would consume the entire bankrupt estate. The Court of Appeals, reversing the District Court, sustained the Government's priority.

If interline freight balances are properly deemed trust funds in the hands of the collecting carrier, Section 3466 would be inapplicable. Because the United States District Court, District New Jersey, rejected the argument that interim balances were held in trust in **In re The Central Railroad Company of New Jersey**, 273 F. Supp. 282 (D. N.J. 1967), aff'd per curiam, 392 F. 2d 589 (3d Cir. 1968), petitioners did not urge that position on the District Court. The District Court noted petitioners' position (App. to Pet. A-31), and recognized the decision in the Third Circuit as controlling.

After the petition for writ of certiorari had been filed in this case, petitioners' counsel learned of an appeal to the Court of Appeals for the Third Circuit (Dockets Nos. 72-1436, 1437 and 1438) filed by a number of railroads in the Penn Central Section 77 proceeding, which asks that court to reconsider and reverse, or restrict to its particular facts, the Court's 1968 decision in the **Jersey Central** case. Appellants' brief to the Court of Appeals has already been filed. And reversal or modification by the Court of Appeals for the Third Circuit of the decision in the **Jersey Central** case would almost certainly advantageously affect the position of the petitioners herein.

The delay in the final disposition of this case will not be prejudicial to any party, since what is involved in the instant Section 77 proceeding is essentially only a distribution of the assets resulting from the sale of the railroad properties of the Debtor.

We submit, therefore, that this petition for rehearing should be granted, to the end that this case should not be finally determined until there has been a final decision on the aforesaid appeal by the railroads in the Penn Central proceeding. If the determination of that case should recognize that under certain circumstances a trust relationship exists in connection with interline freight balances, then in the interest of equity, and in the interest of con-

sistency in the administration of reorganization proceedings under Section 77, the petition should be granted and the case remanded to the Court of Appeals for consideration of the effect of such decision on the rights of petitioners herein. Petitioners will promptly notify the Court of the disposition of the Penn Central proceeding.

Respectfully submitted

K. HARLAN DODSON
HOOKER, KEEBLE, DODSON & HARRIS
900 Nashville Trust Building
Nashville, Tennessee 37201

WILLIAM F. BUNN
135 East Eleventh Place
Chicago, Illinois 60605

DUNCAN B. PHILLIPS
P. O. Box 1808
Washington, D. C. 20013

CHARLES A. HORSKY
188 16th Street, N. W.
Washington, D. C. 20006

Attorneys for Louisville and Nashville Railroad Company, Illinois Central Railroad Company, Southern Railway Company, and Eleven Other Petitioners

Of Counsel:

PHILIP M. LANIER
P. O. Box 1198
Louisville, Kentucky 40201

DAVID M. KEEBLE
900 Nashville Trust Building
Nashville, Tennessee 37201

Certificate of Counsel

As **counsel for the petitioners**, I hereby certify that this petition for rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in Rule 58(2).

K. Harlan Dodson